

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARTIN PICHARDO,

Plaintiff

vs.

**LUCKY COUSINS
TRUCKING, INC.,**

Defendant

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Case No. 5:16-cv-1248-FB

Original Answer & Jury Demand

Pursuant to Rule 8(b), defendant Lucky Cousins Trucking, Inc. ("Lucky Cousins") files its Original Answer and would respectfully show unto the Court as follows:

Responding to the allegations in the Complaint

1. Lucky Cousins denies the allegations in paragraph 1.
2. Lucky Cousins denies the allegations in paragraph 2.
3. Lucky Cousins denies the allegations in paragraph 3.

4. Lucky Cousins admits that this Court has subject matter jurisdiction over plaintiff's Fair Labor Standards Act claims and that supplemental jurisdiction is proper over plaintiff's state law breach of contract claim without prejudice to its right to seek dismissal of the state law breach of contract claim without prejudice should the court dismiss the FLSA claim. Lucky Cousins does not concede the merits by conceding subject matter jurisdiction.

5. Lucky Cousins admits that venue is proper in the Western District of Texas without conceding the merits of plaintiff's claims.

6. Lucky Cousins is not contesting service of process.

7. Lucky Cousins admits that it is engaged in commerce but denies that it is engaged in the production of goods for commerce.

8. Lucky Cousins denies the allegations in paragraph 8.

9. Lucky Cousins denies the allegations in paragraph 9.

10. Lucky Cousins admits that its annual gross income of sales made or business done in 2015 exceeded \$500,000.

11. Lucky Cousins admits the allegations in paragraph 11.

12. Lucky Cousins admits the allegations in paragraph 12.

13. Lucky Cousins denies the allegations in paragraph 13.

14. Lucky Cousins denies the allegations in paragraph 14.

15. Lucky Cousins denies the allegations in paragraph 15.

16. Lucky Cousins admits that it sent Pichardo to its terminal facility in New Philadelphia, Ohio after May 10th. All other allegations are denied.

17. Lucky Cousins denies the allegations in paragraph 17.

18. Lucky Cousins incorporates by reference its responses to paragraphs 1 – 17.

19. Lucky Cousins denies the allegations in paragraph 19.

20. Lucky Cousins denies the allegations in paragraph 20.

21. Lucky Cousins denies the allegations in paragraph 21.

22. Lucky Cousins denies the allegations in paragraph 22.

23. Lucky Cousins denies the allegations in paragraph 23.

24. Lucky Cousins denies the allegations in paragraph 24.

25. Lucky Cousins denies the allegations in paragraph 25.

26. Lucky Cousins denies the allegations in paragraph 26.

27. Lucky Cousins denies the allegations in paragraph 27.

28. Lucky Cousins denies the allegations in paragraph 28.

29. Lucky Cousins incorporates by reference its responses to paragraphs 1 – 28.

30. Lucky Cousins denies the allegations in paragraph 30.

31. Lucky Cousins denies the allegations in paragraph 31.

32. Lucky Cousins denies the allegations in paragraph 32.

33. Lucky Cousins denies the allegations in paragraph 33.

34. Lucky Cousins denies the allegations in paragraph 34.

Affirmative & Other Defenses

35. Lucky Cousins pleads the good faith defense of 29 U.S.C. § 260.

36. Without assuming the burden of proof except as otherwise required by law, Lucky Cousins pleads that plaintiff has been paid all amounts owed.

37. Lucky Cousins pleads res judicata as to plaintiff's claims that were resolved on the merits with the Texas Workforce Commission.

Jury Demand

38. Lucky Cousins demands trial by jury.

Prayer

Lucky Cousins prays that plaintiff take nothing by way of its claims, for taxable costs, and for all other relief to which it may be entitled.

Signed this 23rd day of January, 2017.

/s/ Kevin Pennell

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Certificate of Service

I certify that a true and correct copy of the foregoing document was served via CM/ECF on this 23rd day of January, 2017:

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/s/ Kevin Pennell